Supreme Court, U.S.
FILED
NOV 29 1993

NO. 93-1178

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1993

GREGORY L. GERADS and
DOROTHEA GERADS

PETITIONERS

vs.

UNITED STATES OF AMERICA

RESPONDENT.

- - - - - - - - - - - - - - - - - - -

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

- - - - - - - - - - - - - - - - - - -

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

FOR REVIEW

1. Did the federal judge(s) err when they ordered judgment in favor of the government, which brought a "frivolous civil action in bad faith", by means of citing "criminal statutes", then failed to state a claim upon which relief could be granted?

   The record shows that the only evidence the government proffered was based entirely upon a malefaction of slander, libel and slanderous material that even if proved, would be irrelevant and immaterial.

2. Can the District Court and Eighth Circuit Court of Appeals deprive people of property by means of ignoring the "Public Protection Provisions", of "Positive Law" as set forth in the Paperwork Reduction Act (PRA) of 1980, Public Law 96-511, 94 Stat. 2812?

PRA Section 3512 states: "any information collection requests which do not display a current control number (or neither indicates why it doesn't) are to be considered "bootleg requests" and under Section 3512 may be ignored by the public". And, the penalties under 44 U.S.C. Section 3512 may not be imposed for noncompliance with information collection requests that do not display a current control

number. The record clearly shows that as of this date affixed, not one preemptory document or piece of paper received by the petitioners (Gerads) has ever displayed an OMB number, or indicated why it doesn't, as the law demands.

3. Can the District Court and the Eighth Circuit Court of Appeals be allowed to ignore the Legal Status of the fact that "the contents of the Federal Register are required to be judicially noticed" 44 U.S.C. 1507?

4. Are they allowed to ignore the fact that in the Federal Register, Vol. 38, No. 226, Monday, November 26, 1973, it states "all sections of IRC Title 26 and all penalties,

summons, forms, books and records are strictly enforced under the Bureau of Alcohol, Tobacco and Firearms (ATF), CFR 27, Part 70"?

5. Are the District Courts and Eighth Circuit of Appeals allowed to ignore the Legal Status of the fact that the "Code of Federal Regulations" is prima facie evidence of the text of the original documents (44 U.S.C. 1510)?

6. How can the Eighth District Court not only condone the Government bringing a frivolous civil action, citing as its authority to do so under 26 IRC Sections 7401, 7402 and 7403 which are criminal statutes, confirmed by the Code of Federal Regulations, Table of Authorities at CFR 27 Part 70 (BATF) to deprive the defendants (the Gerads) or more than all of their worldly possessions, but also

allow the Government to do so without ever having to prove in any court of law the validity of its claim?

7. Why did the Government fail to produce the following foundational instruments as required by CFR 27, Ch. 1, Subparts B and C: Part §1.25 an "Application for a Basic Permits"; Part §1.58, "Filing of Permits"; Part §1.59, Public Information as to Applications Acted Upon" and Part §252.51, "The Posting of Bond or Consent of Surety", that bears the signatures of petitioners (Gerads)?

8. Can Federal Courts absolutely ignore the fact that 26 IRC Sections 7301, 7302 and 7303 places

limitations on property subject to forfeiture to, raw materials, equipment, packages and conveyances used in transport and other items such as counterfeit stamps, false stamping or packages, fradulent bonds, permits and entries, all of which are commercial crimes and limited to articles subject to tax on Alcohol, Tobacco and Firearms? (See 4. supra.)

9. Can federal courts ignore both statutory and positive law, which requires that a Notice of Lien must be filed on ATF Form 5651.2, "Notice of Federal Tax Lien" and <u>not</u> IRS Form 668-A, B or J?

The latter form applies only to the Public Salary Tax Act of 1939, Title 4 U.S.C., Section 111, Federal Employees.

10. Can federal courts ignore 26 IRC Section 6338(b) which states that federal liens on real property must follow state law? Plus, can they ignore the fact that the controlling regulation for Section 6338(b) is CFR 27, Part 70 (BATF)?

11. Can federal courts ignore that the United States and all fifty (50) states adopted the Uniform Commercial Code (UCC) which states that all Federal Tax Liens must be certified by the Secretary of Treasury and filed under the UCC in a specific office within each state?

12. And further, can they ignore that the federal lien must follow state laws, not federal?

13. Are the District Courts and Eighth Circuit Court allowed to disregard

"Prima facie evidence", that the Respondent failed to rebutt or contradict?

For example, Petitioner's research uncovered Title 26 IRC Section 7701(a)(29), Internal Revenue Code:

> - The term "Internal Revenue Code of 1986" means this title and the term "Internal Revenue Code 1939" means the Internal Revenue Code enacted February 10, 1939, as amended.

The Internal Revenue Service failed to rebutt the aforesaid facts, that the Internal Revenue Code of 1986 is simply an amendment to the Internal Revenue Code of 1939, however the Internal Revenue Service insists on concealing the fact that the 1939 Code is the Public Salary Tax Act of 1939 found in Title 4 U.S.C. Section 111. Government concealment is an "administrative crime" subject to

"criminal sanctions". Then recently Petitioner's received from the Internal Revenue Service a six-teen (16) page document entitled: "Tax Protest Positions and Arguments".

Paragraph 13. sub-paragraph 4 on page 10 reads as follows (with petitioner's comments in brackets). See also Exhibit 1

> The first internal revenue tax law was enacted on March 3, 1791, and imposed a tax on distilled spirits and stills. This was shortly followed by the first tax protest move-ment. The "Whiskey Rebellion", which President Washington quelled with federal troops.
>
> [Notice how the government fails to state the tax is an "excise tax", that clearly does not apply to petitioners, plus the suttle hint again,

that petitioners are tax protesters. Also note that the government fails to mention the "The Income Tax Act of 1894", 8/17/94 was declared unconstitutional in 1895 by the U.S. Supreme Court in Pollock v. Farmers Loan & Trust Company, 157 U.S. 429, rehearing 158 U.S. 601]

Numerous laws involving taxation followed, particularly after the Sixteenth Amendment.

[In the case of Stanton v. Baltic Mining Co., 240 U.S. 103, the U.S. Supreme Court ruled:

"The 16th Amendment conferred no new power of taxation"...]

In 1939 Congress attempted to codify these laws into one complete law with the passage of Public Law No. 1 of the 76th Congress, the Internal Revenue Code of 1939.

However, since there were unresolved matters with that compilation also, Congress did not pass it as "Title 26 of the United States Code", but rather as the "Internal Revenue Code of 1939".

[Petitioner's researc' found the 1939 Code to be the "Public Salary Tax Act of 1939" 'Act of April 12, 1939, Ch 59, 53 Stat. 574' - Title 4 U.S.C., Section 111.] See Exhibit No. 2 which clearly shows the tax does not apply to petitioners.]

In other words, it was still a "public law" of the United States, but not added into the compilation of laws called the United States Code.

[The aforesaid is not only a lie as Title 4 U.S.C. Section 111 proves, it is also concealment, and concealment is an "administrative crime", subject to criminal sanctions]

Similarly, when the 1986 Code was passed, it was passed as as 99-514; neither was passed as "Title 26 of the United States Code".

[This fact is verified by

Title 26 IRC Section

7701(a)(29) supra.)

Similarly, the various amendments to the Code made by each Congress are also referred to by their law numbers.

[Prima facia evidence that even

when the government attempts to

tell the truth, it employs still

more concealment, which are

"administrative crimes", sub-

ject to criminal sanctions]

14. Are federal courts free to ignore

26 IRC Section 7401. Authorization?

No civil action for the collection or recovery of taxes, or of any fine, penalty or forfeiture, shall be com menced unless the Secretary authorizes or sanctions the proceedings and the Attorney General or his delegate directs that the action be commenced.

(For violation of this statute See Exhibits 3, 4 & 5.)

15. Are federal courts free to ignore and actually condone United States agency's actions of concealment and deception which are "administrative crimes"?

Therefore, for the sake of brevity and due process of law, allow petitioners to point out the deception, trick and trickery set forth on IRS Form 668Y, "Notice of Federal Tax Lien Under Internal Revenue Laws". Notice in box (a) of column (a), it states "KIND OF TAX 1040". Our research however, shows there are more than 85 items subject to tax. 1040 we assumed was a tax form. It's very obvious there is something wrong here. The IRS is

alleging that petitioners (Gerads) owe taxes close to $500,000.00, but failed to state the Code section and regulation that makes us liable. Petitioners checked and surprisingly, the IRS has either made a "whopping mistake" or a "whopper administrative crime", and judging from the IRS's tendentious actions, the latter holds true, and the IRS refuses to admit its error.

> Title 26 IRC Section 1040 Transfer of Certain Farm, etc., Real Property:
>
> (a) General Rule. If the executor of the estate of any decedent transfers to a qualified heir....

Section 1040 has no controlling CFR number or part, and therefore it is null and void. The real shocker of Section 1040 is the fact that neither the U.S. District Court

judge nor the U.S. Attorneys are the least bit embarassed by petitioners live appearances before the Court on no less than four (4) separate occassions.

16. Are the Federal courts allowed to ignore the back side of IRS Form 668Y, entitled "Excerpts From the Internal Revenue Code", where it lists 26 IRC sections 6331., 6332., 6333., 6334., 6343., 7426 and 7429?

17. And, can they ignore the fact that the controlling CFR for all seven sections is CFR 27, Part 70 (BATF)?

18. Are the District Courts and Eighth Circuit Court of Appeals allowed to ignore outright lies as set forth in the United States of America's COMPLAINT at paragraph 2?

The paragraph reads as follows:

> "2. Pursuant to 26 USC Sections 7401 and 7403, this action has been authorized and requested by the Chief Counsel of the Internal Revenue Service, a delegate of the Secretary of the Treasury of the United States, and is brought at the direction of the Attorney General of the United States."

See Petitioner's Exhibits 3, 4 and 5 and see also paragraph 14 supra. which clearly shows that the United States of America is not only a liar, but it irrefutably proves the United States of America lacked "jurisdiction" whatsoever. And the United States of America violated its "authority" which is an "administrative crime" subject to "criminal sanctions" as a matter of law.

19. Can the federal district court ignore the fact that the petitioners under a FOI/PA request

obtained a copy of their IRS Individual Master Files (IMF), the alleged assessment for the years alleged in the United States of America's COMPLAINT?

20. And can they ignore that the IMF's came unsigned, and the fact that the law stipulates that if they are not signed or certified, means its computer errors?

21. Is is not true that federal judges are supposed to know the law, or have accessibility to law books to verify points of law?

Note the government used five (5) pages of a nine (9) page Compliant for a total of seventeen (17) paragraphs filled with outright half-truths and false accusations, hinting that the petitioners were attempting to defraud their credi-

tors. Paragraph 28 employs the term "were fradulent because", and other slanderous material throughout the complaint. All designed to create bias and prejudice the judge against the petitioners.

22. Did a judge or his law clerk check 26 U.S.C. Subtitle A, Ch. 1J, Part 1, Subpart E. - Grantors And Others Treated as Substantial Owners?

> **IRC Sec. 674. Power to control beneficial enjoyment.**
>
> (a) General Rule. - The grantor shall be treated as the owner of any portion of a trust in respect of which the beneficial enjoyment of the corpus or the income therefrom is subject to a power of disposition, exercisable by grantor or a nonadverse party, or both without the approval or consent of any adverse party.

See also IR Code Sections 675, 676 and 677. Again, the government is clearly concealing the statute law

from the court and the petitioners when the statute sections themselves are absolute fact that the petitioners at no time whatsoever attempted to defraud anyone. As for paragraphs 24 and 28, the Minnesota law requirement for no consideration transfers of real property, is that one state the term "this transfer is for $500.00 or less". Said term allows the state to charge the $1.65 stamp fee. The facts are, the United States brought the suit in bad faith and as a "fraud upon the court". The United States and the U.S. Attorneys are operating with "unclean hands", in direct violation of the "Clean Hands Doctrine". Plus the fact that the years in question are "Time Tolled" and have been "Time Tolled" for periods of years ranging from a low

of six (6) years to a high of thirteen (13) years". See paragraphs No.'s 6-15, 17, 18, 21-28 and 31(d) of the United States' Complaint.

23. Are federal appellate judges to be allowed to impose punitive fines and sanctions on petitioners who file justifiable appeals but raise issues that appellate judges would prefer not to deal with and/or because such judges have a personal bias against petitioners?

24. It is perfectly clear from the above "Questions Presented" that petitioner's appeal was justified on any <u>one</u> of a number of grounds. Despite this, the Eighth Circuit imposed costs and a $1,500 fine on petitioners. If these sanctions are not lifted by the Supreme Court, then will it not acquiesed to a chilling of a citizen's right to use the appeals process?

25. Will it not also in the process, have participated in an abridgment of an American's rights under the First, Fifth and Eighth Amendments to the United States Constitution?

26. Are federal courts free to do as the Eighth Circuit has done here to enforce payment by distraint of taxes for which Congress never made petitioners liable?

* * * * *

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NO. _____

IN THE SUPREME COURT

OF THE

UNITED STATES OF AMERICA

OCTOBER TERM, 1993

GREGORY L. GERADS,
DOROTHEA A. GERADS,

PETITIONERS

vs.

UNITED STATES OF AMERICA,

RESPONDENT

PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

Petitioners, Gregory and Dorothea Gerads, respectfully prays that a writ of certiorari issue to review the judgment and opinion of the United States Court of Appeals for the Eighth

Circuit refusing to supress from evidence all libel and slanderous material which the United States relied upon to make up for the fact that the United States failed to state a cause upon which relief could be granted. The United States of America brought the suit under 26 U.S.C. Sections 7401-7403. Said statutes are commercial crimes and the United States failed to proffer any evidence whatsoever to its alleged commerical crimes. Such nonsense is clearly an administrative crime committed by the United States against the petitioners.

OPINIONS BELOW

The Eighth Circuit Court of Appeals' published opinion in this matter "affirming" the government's summary judgment motion for sanctions appears in Appendix A. The District Court's Order entitling the Plaintiff to judgment appears in Appendix C.

JURISDICTION

The opinion of the Court of Appeals failed to address the issue that the United States of America brought the suit under 26 U.S.C. Sections 7401-7403 that call for the United States to proffer evidence of criminal activities. The United States failed to produce any evidence whatsoever of any commercial crime. The Appeals Court based its judgment entirely on mocking the United States' libel and slanderous material. Even if it proved true, it would be irrelevant and immaterial. The Appeals Court did cite about eight cases, all irrelevant and simply matched the slanderous material contained in both the United States' Complaint and the Appeals Court decision. If slander and libel are allowed to replace the "intention of the lawmaker constitutes the law" as set

forth in the U.S. Supreme Court case of Stewart vs. Kahn, 11 Wall 494, 504, then it is only a matter of time and the judges will be receiving the same treatment they have been dishing out, and deservedly so.

The Eighth Circuit Court of Appeals' opinion in this matter was filed on July 26, 1993. A Petition for Rehearing was timely filed on July 29, 1993, and the Court of Appeals denial of the Petition of Rehearing issued on August 30, 1993 is set forth in Appendix B.

Petitioners believe that the statutory provision that invokes this honorable Court's jurisdiction to review the judgment in question by writ of certiorari is under Title 28 U.S.C. §1254.

CONSTITUTIONAL & STATUTORY PROVISIONS INVOLVED

Amendment XVI to the United States Constitution is set forth in Appendix D.

STATEMENT OF THE CASE

The United States District Court, District of Minnesota, Minneapolis Division, had jurisdiction pursuant to Title 28 U.S.C. Sections 1340 and 1345, and alleged 26 U.S.C. Sections 7402(a) and 7402(e).

Early on in 1988, the Internal Revenue Service commenced an illegal collection of information against Petitioners (Gregory and Dorothea Gerads) in absolute violation of the "Public Protection Provisions" of the Paperwork Reduction Act (PRA) of 1980. Section 3512 of the Act absolutely forbids any information collection requests which do not display a current OMB (Office of Management and Budget) number. And, 44 U.S.C. Section 3512 forbids sanctions and penalties for non-

compliance with information collection requests that do not display OMB control numbers.

The IRS and the Courts "violated" Title 44 U.S.C. Section 1507 that "the contents of the Federal Register are required to be judicially noticed". The Federal Register Vol. 38, No. 226, Monday, November 26, 1973 states: "All sections of IRC Title 26 and all penalties, summons, forms, books and records are strictly enforced under the (BATF)" which makes it "commercial crimes" subject to excise taxes. Therefore, it would be absolutely impossible for anyone to owe an income tax under 26 U.S.C. Section 7401-7403 as the United States falsely alleged.

Also, Title 44 U.S.C. Section 1510 states: "The Code of Federal Regulations

is prima facie evidence of the text of the original documents". To date, the United States has failed to proffer or introduce even one CFR that would positively establish any tax liability whatsoever, be it income or excise taxes. The only question that remains, is how could any court hear such a case, when it is clear the court not only lacked jurisdiction, but it had no authority to issue any opinions or to rule on the case at hand.

REASONS FOR GRANTING THE WRIT

Certiorari should be granted for more than a half dozen reasons.

First, "the intentions of the lawmaker constitutes the law".

Stewart vs. Kahn, 11 Wall 494, 504.

Second, the chart of the fifty

titles of the United States Code clearly shows that Title 26 U.S.C. has never been enacted into positive law. And, 26 U.S.C. Section 7806(a) and (b) confirms the fact that Title 26 U.S.C. is non-law. Without a law, there can be no assessment, the lawmaker has spoken. Also, 26 U.S.C. Section 7807 confirms that Title 26 U.S.C. is nothing more than the 1939 Code as amended. The 1939 Code is the "Public Salary Tax Act of 1939" (Act of April 12, 1939, Ch 59, 53 Stat. 574) found in Title 4 U.S.C. and not in Title 26 U.S.C. This fact is noticed as real government "concealment" which is "criminal activities" practiced, as history clearly shows, by all three branches of government.

Third, it's no wonder the U.S. Supreme Court has ruled that "the 16th

amendment conferred no new power of taxation" in Stanton vs. Baltic Mining Co., 240 U.S. 103 and "you cannot pay a tax assessment which is not yet in existence." Hanson vs. U.S., 455 Fed. Sup. 1367 (1978).

Fourth, there can be no doubt whatsoever that the District Court and Eighth Circuit Court of Appeals "erred or is acting in collusion" when they ruled against petitioners based soley on libel and slanderous material, that even if found to be truthful would still be irrelevant and immaterial.

Fifth, its becoming very clear why the inferior courts either look the other way or want to pass the buck upstairs on the absolute violations of the "Public Protection Provisions" of the

"Paperwork Reduction Act of 1980", as set forth into positive law in Title 44 U.S.C. Section 3512 .

Sixth, the absolute violations by all concerned of the Code of Federal Regulations and the concealment of the fact that the CFR's name the government agency that wrote the regulation and part, to enable a citizen self-determination as to whether or not the tax applies to him, and the fact that the CFR is to be "judicially noticed". Also, the Government's concealment of the fact that the Congressional Record is where the "intention of the lawmaker constitutes the law", is found. For example, Senate Report No. 1788, Congressional Reports, Date: October 13, 1966, Congressional Record Vol. 112 (1966). The IRS has to follow the UCC of the State

to perfect its liens. And further, Minnesota Statutory Citations, Sections 272.49, 272.481 to 272.487 demands that IRS liens must be certified by the Secretary of Treasury or his delegate and filed under the UCC. This was not done in the petitioner's case. One can accept the fact that an error might accidently occur, but it's absolutely intollerable when every rule, statutory law and regulation is violated to protect the government extortion mill to steal the citizen's property and livelihood.

UNITED STATES SUPREME COURT CASES:

Under Title I, USCS Section 204(a) 5.:

> ....if construction of a section of United States Code which has not been enacted into positive law is necessary, recourse must be had to original statutes themselves and any change of Congress should be given no weight.
>
> United States v. Welden (1964) 377 US 95, 12 L. Ed 2d 1252, 84 S. Ct. 1082

The revenue laws are a code or system in regulation of tax assessment and collection. They relate to taxpayers, and not to non-taxpayers. The latter are without scope. No procedure is prescribed for non-taxpayers and no attempt is made to annul any of their rights and remedies in due course of law."

Long v. Rasmussen. 281 F. 236 at 238 and Economy Plumbing and Heating v. U.S. 470 F. 2d 585 at 589.

Privilege tax on individual -validity.

An individual, unlike a corporation, cannot be taxed for the mere privilege of existing and owning property.

Redfield et.al. vs. Fisher et.al., Or. 292 Pac. 813

Included in the right of personal liberty and the right of private property -- partaking of the nature of each is the right to make contracts for the acquisition of property. Chief among such contracts is that of personal employment, by which labor and other services are EXCHANGED for money or other forms of PROPERTY".

Coppage v. Kansas, 236 U.S. 1, at 14.(1918)

The Supreme Court of the United States also stated that if anyone relies on their decisions they cannot be penalized.

> "And if the doctrine of 'atarc decisis' has any meaning at all, it requires that people in their everyday affairs be able to rely on our decisions and not be needlessly penalized for such reliance."
>
> United States v. Manson, Administrator. et.al. 412 U.S. 391.

Based on all the unlawful administrative crimes set forth herein, it appears that only the petitioners put any faith in the Supreme Court decisions. As the inferior courts simply snub their nose at, and override any decision of the U.S. Supreme Court that suits the inferior court's device mood of the day.

Ex-President Reagan summed it up in very simple terms that seem to comply

with the decisions of the U.S. Supreme Court when he said:

> "Our federal tax system is, in short, utterly impossible, utterly unjust and completely counterproductive. The present system of taxation reeks with injustice and is fundamentally un-American. It has earned a rebellion and it's time we rebelled.
>
> President Ronald Reagan
> May 1983, Williamsburg, VA

The Court should grant certiorari to explicity rule that it meant what it said in Stewart vs. Kahn; U.S. vs. Welden and U.S. vs. Manson Administration, and all other cases cited that positive law must be upheld. And further, to resolve the conflict between the circuits created by the Eighth Circuit decision in this matter.

CONCLUSION

For the reasons set forth above, a writ of certiorari should issue to review the judgment and opinion of the Court of Appeals in this matter.

DATED: November 26, 1993

Respectfully submitted,

Gregory L. Gerads
GREGORY L. GERADS

Dorothea A. Gerads
DOROTHEA A. GERADS

Pro Se

1/ If this Court elects not to address the issues presented in the writ at the present time, it is requested that the writ issue and that the matter be remanded to the Court of Appeals for redetermination in light of this Court's opinions in Stewart, supra, Welden, supra, and Manson, supra.

Internal Revenue Service
District Director

Date: 11-22-93

TAX PROTEST POSITIONS
AND ARGUMENTS

(Page 10, Subparagraph 4)

The first internal revenue tax was was enacted on March 3, 1791, and imposed a tax on distilled spirits and stills. This was shortly followed by the first tax protest movement, the "Whiskey Rebellion", which President Washington quelled with federal troops. Numerous laws involving taxation followed, particularly after the Sixteenth Amendment. In 1939, Congress attempted to codify these laws into one complete law with the passage of Public Law No. 1 of the 76th Congress, the Internal Revenue Code of 1939. However, since there were unresolved matters with that compilation also, Congress did not pass it as "Title 26 of the United States Code", but rather as the "Internal Revenue Code of 1939". In other words, it was still a "public law" of the United States, but not yet added into the compilation of laws called the United States Code. Similarly, when the 1954 Code was passed, it as denominated Public Law 591 of the 83rd Congress, passed August 16, 1954; and when the 1986 Code was passed, it was passed as PL 99-514; neither was passed as "Title 26 of the United States Code". Similarly, the various amendments to the Code made by each Congress are also referred to by their public law numbers.

§111. Same; taxation affecting Federal employees; income tax The United States consents to the taxation of pay or compensation for personal service as an officer or employee of the United States, a territory or possession or political subdivision thereof, the government of the District of Columbia, or an agency or instrumentality of one or more of the foregoing, by a duly consitituted taxing authority having jurisdiction, if the taxation does not discriminate against the officer or employee because of the source of the pay or compensation.
(Added Sept. 6, 1966, P.L. 89-554, §2(c), 80 Stat. 608.)

U.S. DEPARTMENT OF JUSTICE

JMK:gej:145-FOI;1914

Washington D.C. 20530

October 12, 1993

Gregory L. Gerads
Dorothea A. Gerads
c/o Rt. 2, Box 52
Freeport, MN 56331-9670

Dear Mr. & Mrs. Gerads:

This letter is in response to your September 13, 1993 Freedom of Information Act/Privact Act request for documents pertaining to you. Your request was received by this office on October 4, 1993.

We conducted a search of the Civil Division case file record system for documents indexed under both your names. Our search failed to identify any reference under your names. Accordingly, the Civil Division has no records within the scope of your request.

Sincerely,

/s/

James M. Kovacks
Attorney in Charge
FOI/PA Office, Civil Division

EX 3-1

U.S. DEPARTMENT OF JUSTICE

CRM-931093P

Washington D.C. 20530

NOV 4 1993

Mr. Gregory L. Gerads
c/o RT 2, Box 52
Freeport, MN 56331

Dear Mr. Gerads:

This letter is in response to your request of September 17, 1993 pursuant to the Privacy Act, for access to records concerning you.

We did not find any Criminal Division records pertaining to you in our search of the indexes for the Criminal Division systems you designated.

You have a right to an administrative appeal of this determination. Department regulations provide that such appeals must be filed within thirty days of your receipt of this letter. 29 C.F.R. 16.8. Your appeal should be addressed to: The Office of Information and Privacy, United States Department of Justice, 10th Street and Constitution Avenue, N.W., Washington, D.C. 20530. Both the envelope and the letter should be clearly marked with the legend "FOIA Appeal." If you exercise this right and your appeal is denied, you also have the right to seek judicial review this action in the federal judicial district (1) in which your reside, (2) in which you have

your principal place of business, (3) in which the records denied are located, or (4) for the District of Columbia.

Sincerely,

/s/

Miriam P. Loui, Attorney-Advisor
Freedom of Information/Privacy Act Unit
Office of Enforcement Operations
Criminal Division

U.S. DEPARTMENT OF JUSTICE

CRM-931093P

Washington D.C. 20530

NOV 4 1993

Mrs. Dorothea A. Gerads
c/o RT 2, Box 52
Freeport, MN 56331

Dear Mrs. Gerads:

This letter is in response to your request of September 17, 1993 pursuant to the Privacy Act, for access to records concerning you.

We did not find any Criminal Division records pertaining to you in our search of the indexes for the Criminal Division systems you designated.

You have a right to an administrative appeal of this determination. Department regulations provide that such appeals must be filed within thirty days of your receipt of this letter. 29 C.F.R. 16.8. Your appeal should be addressed to: The Office of Information and Privacy, United States Department of Justice, 10th Street and Constitution Avenue, N.W., Washington, D.C. 20530. Both the envelope and the letter should be clearly marked with the legend "FOIA Appeal." If you exercise this right and your appeal is denied, you also have the right to seek judicial review this action in the federal judicial district (1) in which your reside, (2) in which you have

your principal place of business, (3) in which the records denied are located, or (4) for the District of Columbia.

Sincerely,

/s/

Miriam P. Loui, Attorney-Advisor
Freedom of Information/Privacy Act Unit
Office of Enforcement Operations
Criminal Division

UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

No. 93-1449

United States of America,
Appellee,

v.

Gregory L. Gerads, individually;
Dorothea A. Gerads, individually,
Appellants,

* *

Appeal from the United States
District Court for the
District of Minnesota.

(PUBLISHED)

* *

Submitted: June 29, 1993
Filed: July 26, 1993

Before FAGG, BEAM, HANSEN, Circuit Judges.

PER CURIAM.

Gregory L. Gerads and Dorothea A. Gerads, husband and wife (appellants), appeal from the district court's[1] orders

[1]The Honorable Harry J. MacLaughlin, United States District Judge for the District of Minnesota.

granting the government's motions for summary judgment in this action to recover back income taxes. We affirm.

Appellants are tax protesters who have refused to file or pay federal income taxes since 1976. They reside on a tract of farmland in Freeport, Minnesota, in Stearns County. On December 5, 1988, the IRS sent appellants Notice of Deficiency letters for the tax years 1976 through 1983. On April 18, 1989, the government assessed federal income taxes, additions to tax, and statutory interest against appellants for these tax years. The government filed notice of assessments and demanded payment. Appellants did not contest the deficiencies, and, other than Gregory's payment of $449.63, they have not attempted to satisfy their tax liability. The government then filed notices of federal tax liens against the farmland

with the Stearns County Recorder in the names of appellants, Rocky Hills, as nominee of Gregory L. Gerads, and Sunrise Living Trust, as nominee of both appellants. On July 24, 1991, the government commenced this action, under 26 U.S.C. §§7401-7403, to (1) reduce to judgment the income taxes it has assessed against appellants for the years 1976 through 1983; (2) set aside as fradulent appellants' purported conveyance of the farmland to the two "trusts"; (3) quiet title to the property; and (4) eject any and all inhabitants from the property to facilitate foreclosure of its tax liens. Thereafter, the government moved for summary judgment. The district court granted the motions and the relief the government requested. This appeal followed.

The district court correctly granted the government's motions for summary

judgment because appellants did not contest the factual bases for the assessments and because their legal arguments attacking the court's jurisdiction and the validity of the assessments were clearly meritless. See Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). The arguments they advance on appeal are also frivolous. First, the Certificates of Assessments and Payments submitted by the government here are sufficient to establish the validity of the assessments. See Geiselman v. United States, 961 F. 2d 1, 5-6 (1st Cir.) (per curiam), cert. denied, 113 S. Ct. 261 (1992). Second, appellants' claim that the government failed to establish that the district court had "inland jurisdiction," and therefore, the case against them should have been dismissed as meritless. United States v. Saunders, 951 F. 2d 1065, 1068 (9th Cir. 1991). Third, we have rejected, on numerous

occasions, the tax-protester argument that the federal income tax is an unconstitutional direct tax that must be apportioned. See, e.g., Lively v. Commissioner, 705 F.2d 1017, 1018 (8th Cir. 1983) (per curiam). Likewise, we have held that wages are within the definition of income under the Internal Revenue Code and the Sixteenth Amendment, and are subject to taxation. Denison v. Commissioner, 751 F. 2d 241, 242 (8th Cir. 1984) (per curiam), cert. denied, 471 U.S. 1069 (1985). And, finally, we reject appellants' contention that they are not citizens of the United States, but rather "Free Citizens of the Republic of Minnesota" and, consequently, not subject to taxation. See United States v. Kruger, 923 F. 2d 587, 587-88 (8th Cir. 1991) (rejecting similar argument as "absurd").

The government requests that we assess $1,500 in sanctions against

appellants for bringing this frivolous appeal based on discredited, tax-protester arguments. Because the arguments appellants advance for reversal are clearly lacking in merit and frivolous, we grant the government's motion for $1,500 in sanctions pursuant to 28 U.S.C. §1912 and the Federal Rule of Appellate Procedure 38. See United States v. Carter, 988 F. 2d 68, 69-70 (8th Cir. 1993) (per curiam) ("As the arguments raised in this appeal are frivolous, and we have many times so held, we award a sanction in the form of damages in the amount of $1500 against appellants."); Kruger, 923 F. 2d at 588 ("Because this appeal is utterly frivolous, the government's motion for sanctions in the amount of $1,500 is granted").

Accordingly, we affirm the district court's judgment and grant the government's motion for sanctions in the amount of $1,500.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS,
EIGHTH CIRCUIT

UNITED STATES COURT OF APPEALS

FOR THE EIGHTH CIRCUIT

No. 93-1449MNMI

United States of America,

Plaintiff-Appellee,

vs.

Gregory L. Gerads, individually;
Dorothea A. Gerads, individually,

Defendants-Appellants,

Gregory L. Gerads, as Trustee for
Rocky Hills; Dorothea A. Gerads;
Ruth M. Bloch; Jeffrey J. Gerads;
Beth M. Gerads; Peggy E. Gerads,

Defendants.

* *

Appeal from the United States
District Court for the
District of Minnesota.

* *

The petition for rehearing by the

panel is denied.

August 30, 1993

Order Entered at the Direction of the Court:

/s/ MICHAEL E. GANS

Clerk, U.S. Court of Appeals, Eighth Circuit

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

United States of America,

Plaintiff,

v.

Gregory L. Gerads, individually; Dorothea A. Gerads, individually; Gregory L. Gerads, as Trustee for Rocky Hills; Gregory L. Gerads; Dorothea A. Gerads, Ruth M. Bloch, Jeffrey J. Gerads, Beth M. Gerads, Peggy E. Gerads, Karen A. Gerads, Judy L. Gerads, as Trustees for Sunrise Living Trust; State of Minnesota, Commissioner of Revenue,

Defendants.

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CIVIL 4-91-623

MEMORANDUM AND ORDER

* * * * * * * * * * * * * * * * * * * *

Thomas B. Heffelfinger, United States Attorney, and Lonnie F. Bryan, Assistant U.S. Attorney, 234 U.S. Courthouse, Minneapolis, MN 55401; Thomas V. Linguanti, U.S. Department of Justice, Tax Division, Ben Franklin Station, P.O. Box 7238, Washington D.C. 20044, for plaintiff.

Gregory L. Gerads, Dorothea A. Gerads, Route 2, Box 52, Freeport, MN 56331, pro se.

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This matter is before the Court on plaintiff's motion for partial summary

judgment and defendants Gregory L. Gerads and Dorothea A. Gerads' motion to dismiss for lack of jurisdiction. The plaintiff's motion will be granted and these defendants' motion will be denied.

FACTS

This is a civil tax suit brought by the United States pursuant to 26 U.S.C. §§7401-7403 in which it seeks to reduce to judgment the income taxes and related interest and additions assessed against the defendants Gregory L. Gerads (Gregory) and Dorothea A. Gerads (Dorothea), to set aside certain conveyances of property as fradulent, and to foreclose federal tax liens against that property. While Gregory and Dorothea have appeared in this case by filing an answer pro se, the clerk has entered default as to the other defendants.

Both Gregory and Dorothea failed to file federal individual income tax

returns for the 1976 through 1983 tax years. Dec. of Shirley Dunham Regarding Gregory Gerads ¶ 2, 6, 10, 14, 18, 22, 26, 30 (Gregory Decl.); Decl. of Shirley Dunham Regarding Dorothea Gerads ¶ 2, 6, 10, 14, 18, 22, 26, 30 (Dorothea Decl.). The Internal Revenue Service sent each of them a notice of their respective deficiencies on December 5, 1988. See Pl.'s Mem. Supp. Summ. J. Exs. B, BB. Using information from the United States Department of Labor, Bureau of Labor Statistics, the Service reconstructed each Gerads' taxable income and assessed income tax deficiencies, penalties, and interest against each of them in the total sum of $131,432.87 on April 18, 1989. See id. Exs. D, E, F, G, H, I, J, CC, DD, EE, FF, GG, HH, II, JJ. Notice of these assessments were sent to the Gerads individually at their last known residence in April 18, 1989. Id. While

Gregory paid $449.63, which the Service applied toward his 1976 liability, no other payments have been made by either of the Gerads. The Gerads apparently did not petition the Tax Court for a redetermination of these assessments.

The government now moves for partial summary judgment on the tax assessments against Gregory and Dorothea. As to Gregory, the government claims that $130,983.24, plus additional interest and additions accruing after the date of the assessment, remains due and owing. As to Dorothea, the government claims that $131,432.87, plus additional interest and additions accruing after the date of the assessment, remains due and owing. After their response to the government's motion was due, Gregory and Dorothea each filed eight separate briefs in which they essentially move the Court to dismiss both plaintiff's motion for partial sum

mary judgment and this action for lack of jurisdiciton. Each of these motions will be addressed in turn.

DISCUSSION

I. Government's Motion for Partial Summary Judgment

A movant is not entitled to summary judgment unless the movant can show that no genuine issue exists as to any material fact. Fed. R. Civ. P. 56(c). In considering a summary judgment motion, a court must determine whether "there are any genuine factual issues that properly can be resolved only by a finder of fact because they may reasonably be resolved in favor of either party." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986). The role of the court is not to weigh the evidence but instead to determine whether, as a matter of law, a genuine factual conflict exists. AgriStor Leasing v. Farrow, 826 F.2d 732, 734 (8th Cir. 1987). "In making

this determination, the court is required to view the evidence in the light most favorable to the nonmoving party and to give that party the benefit of all reasonable inferences to be drawn from the facts." AgriStor Leasing, 826 F. 2d at 734. When a motion for summary judgment is properly made and supported with affidavits or other evidence as provided in Fed.R.Civ.P. 56(c), then the nonmoving party may not merely rest upon the allegations or denials or the party's pleading, but must set forth specific facts, by affidavits or otherwise, showing that there is a genuine issue for trial. Lomar Wholesale Grocery, Inc. v. Dieter's Gourmet Foods, Inc., 824 F.2d 582, 585 (8th Cir. 1987), Cert. denied. 108 S. Ct. 707 (1988). Moreover, summary judgment must be entered against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on

which that party will bear the burden of proof at trial. Cleotex Corp. v. Catrett, 477 U.S. 317, 324 (1986).

Federal district courts have jurisdiction in civil actions to render judgments necessary to enforce the internal revenue laws. 26 U.S.C. §7402(a); Miller & Miller Auctioneers, Inc. v. G.W. Murphy Indus., Inc., 472 F.2d 893, 895 (10th Cir. 1973); United States v. Firnhaber, 337 F. Supp. 1010, 1012 (D. Wis. 1971). Although the burden in tax collection cases initially rests with the government, the government meets its threshold burden merely by introducing its deficiency determination. Zuhone v. Commissioner, 883 F.2d 1317, 1325 (7th Cir. 1989). The burden then shifts to the taxpayer to disprove by a preponderence of the evidence the government's assessment, which is otherwise presumed correct. Mattingly v. United States, 924

F.2d 785, 787 (8th Cir. 1991); DiMauro v. United States, 706 F.2d 882, 884 (8th Cir. 1983); see United States v. Janis, 428 U.S. 433, 441 (1976).

In this case, the Court finds that the government has met its initial burden. The Government has submitted certificates of assessments for the relevant tax years. Pl.'s Mem. Exs. D, E, F, G, H, I, J, CC, DD, EE, FF, GG, HH, II, JJ. These certificates are admissible as self-authenticating public records. Thom v. United States, No. 4-91-76, slip op. at 5 n.3 (D. Minn. Jan. 16, 1992); Fed.R. Evid. 803(8), 902(1), 902(4) & 1005. In calculating the assessments, the government relied upon figures obtained from the Bureau of Labor Statistics.[1] As plaintiff correctly notes, the Service

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[1] Specifically, the government used information relating to the estimated household income for families residing in, among other areas, the Freeport, Minnesota area, the site of the Gerads'

1 (...continued)
residence. See Gregory Decl. ¶ 3, 7, 11, 15, 19, 23, 27, 31 & Ex. A; Dorothea Decl. ¶ 3, 7, 11, 15, 19, 23, 27, 31 & Ex. A. The following table reflects the amounts owed by Gregory, including income taxes, interest, delinquency penalties, negligence penalties, failure to pay estimated tax penalties, and substantial understatement of income tax penalties:

Year	Assesment ($)
1976	7,400.78
1977	9,923.75
1978	13,021.29
1979	15,791.15
1980	16,729.33
1981	24,164.17
1982	23,588.85
1983	20,813.55

Gregory Decl. ¶ 5, 9, 13, 17, 21, 25, 29, 33. As noted above, a $449.63 payment was applied toward Gregory's 1976 tax liability, making the total sum due and owing $130,983.24, plus interest and additions accruing after April 18, 1989.

The following table reflects the amounts owed by Dorothea, including income taxes, interest, delinquency penalties, negligence penalties, failure to pay estimated tax penalties, and substantial understatement of income tax penalties:

Year	Assessment ($)
1976	7,400.78
1977	9,923.75
1978	13,021.29
1979	15,791.15
1980	16,729.33
1981	24,164.17
1982	23,588.85
1983	20,813.55

may reconstruct the income of a taxpayer who fails to file a return by any reasonable method, including by estimates. Denison v. Commissioner, 47 T.C.M. 1695, 1696 (1984) (attached to Pl.'s Mem. as App. 1), aff'd, 751 F. 2d 241 (8th Cir.), cert. denied, 471 U.S. 1069 (1985); Cupp v. Commissioner, 65 T.C. 68, 82 (1975) (attached to Pl.'s Mem. as App. 2), aff'd without op., 559 F.2d 1207 (3d Cir. 1977); see Holland v. United States, 348 U.S. 121, 125 (1954). Courts have explicitly held that using data derived from the Bureau of Labor Statistics in calculating a taxpayer's income is reasonable. E.g., Denison, 47 T.C.M. at 1696; Pollard v. Commissioner, 786 F.2d 1063, 1066 (11th Cir. 1986). The assessments in this case are therefore proper.

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1 (...continued)
Gregory Decl. ¶ 5, 9, 13, 17, 21, 25, 29, 33. No payments have made with respect to Dorothea's liabilities. Thus, the total sum due is $131,432.87, plus interest and additions accuring after April 18, 1989.

The government has also shown that the Service properly notified the Gerads of their respective deficiencies. If the Service determines that there is a deficiency, it must send notice of the deficiency by certified or registered mail to the taxpayer's last known address. See 26 U.S.C. §§6212(b)(1) & 6213(a); United States v. Ahrens, 530 F.2d 781, 784 (8th Cir. 1976); United States v. Zolla, 724 F.2d 808, 810 (9th Cir. 1984). Here the Service sent each of the Gerads notice of their respective tax deficiencies to their home by certified mail on December 5, 1988. See Pl.'s Mem. Exs. B & BB. Although the taxpayer generally has a period of 90 days after the statutory notice in which to petition the tax court for a redetermination, see Ahrens, 530 F.2d at 784 (citing 26 U.S.C. §6213(a)), there is no evidence that either of the Gerads ever filed such a petition. The Court therefore finds that the amount of

the assessments and proper notice to the taxpayer have been presumptively established, and that this collection action is thus proper. See 26 U.S.C. §6213(a); Ahrens, 530 F.2d at 784. Because the government has met its initial burden, the burden shifts to the Gerads to disprove the government's assessment. No such effort has been made beyond the Gerads' motion objecting to the Court's jurisdiction. Accordingly, the government is entitled to have the income taxes and related interest and additions assessed against the defendants reduced to judgment.

II. Gerads' Motion to Dismiss for Lack of Jurisdiction

The Gerads argue that this Court lacks jurisdiction over this action. Their position is essentially this. They contend that although they are citizens of the "Republic of Minnesota," they are not citizens of the United States because

they were born free and have not expressly consented to be citizens. In order to be subject to the taxing power of the federal government, the Gerads' argue that they, as nonresident aliens, must have done something, such as voluntarily file a Form 1040, that would create a contract between them and the United States to pay taxes. This contract, they continue, would give rise to a legal liability to pay taxes. They maintain that because they have not done anything to demonstrate their assent to enter into such a contract, this Court lacks jurisdiction over this case.

Contrary to the Gerads' position, however, they are clearly citizens of the United States. The Gerads admit that they were born in Minnesota and that they are currently citizens of Minnesota. The Fourteenth Amendment expressly provides that all persons born in the United States are citizens of the United States

and of the state in which they reside, U.S. Const. amend. XIV, §1. Because they were born in Minnesota, the Gerads are citizens of the United States, and as current residents of Minnesota are subject to the jurisdiction of this Court and to the application of the Internal Revenue Laws. Their motion to dismiss will therefore be denied.

Accordingly, based on the foregoing, and upon all the files, records and proceedings herein,

IT IS ORDERED that:

1. plaintiff's motion for partial summary judgment is granted;

2. plaintiff is entitled to judgment as a matter of law against Gregory L. Gerads with respect to each assessment made on April 18, 1989, as follows, plus additional interest and additions accruing pursuant to law after April 18, 1989:

Year	Assessment
1976	6,951.15
1977	9,923.75
1978	13,021.29
1979	15,791.15
1980	16,729.33
1981	24,164.17
1982	23,588.85
1983	20,813.55
TOTAL	$130,983.24

3. plaintiff is entitled to judgment as a matter of law against Dorothea A. Gerads with respect to each assessment made on April 18, 1989, as follows, plus additional interest and additions accruing pursuant to law after April 18, 1989:

Year	Assessment
1976	7,400.78
1977	9,923.75
1978	13,021.29
1979	15,791.15

1980	16,729.33
1981	24,164.17
1982	23,588.85
1983	20,813.55
TOTAL	$131,432.87

4. defendants Gregory L. Gerads and Dorothea A. Gerads' motion to dismiss for lack of jurisdiction is in all respects denied.

/s/
Judge Harry L. MacLaughlin
United States District Court

DATED: June 16, 1992

ARTICLE XVI

The Congress shall have power to lay and collet taxes on incomes, from whatever source derived, without apportionment among the several States, and without regard to any census or enumeration.